

ACCESS AGREEMENT

This **ACCESS AGREEMENT** ("Agreement") is made and entered into by and between CITY OF OLYMPIA (hereinafter "The City"), and the PORT OF OLYMPIA (hereinafter "The Port"), both of whom shall be referred to individually as a "Party" to this Agreement and collectively as the "Parties" to this Agreement.

RECITALS

The Port previously requested access to the City stormwater system and to areas of real property connected to or adjacent to the City stormwater system (collectively, the "System") to perform environmental sampling and analysis. The Port requested access to the System on behalf of its retained environmental consultant, Anchor QEA LLC ("Anchor").

The Port has requested additional access to the System on behalf of Anchor to perform additional environmental sampling and analysis, including the installation of sediment traps in three locations: (1) Moxlie Creek outfall; (2) Fiddlehead Marina outfall; and (3) East Bay Redevelopment Site outfall. The scope of the additional work that the Port has requested to be performed within the System is set forth in **Exhibit A** to this Agreement.

The City has agreed to grant such access to the System for the performance of the work set forth in Exhibit A, subject to certain terms and conditions as set forth in this Agreement.

NOW, THEREFORE, the Parties desire to enter into this Agreement to allow the Port access to the System to perform the Work:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein as terms and conditions of this Agreement.

2. **Right of Access.** The City grants the Port and its employees, agents, consultants, and contractors (including but not limited to Anchor and any subcontractors hired by Anchor) a temporary, non-exclusive license to enter the System on one or more occasions to perform the Work set forth in Exhibit A. The City is not granting a possessory right, easement, or other property interest. All Work as described in Exhibit A shall be conducted and paid for by the Port. Any Work performed by the Port or its consultants or contractors outside of the investigation activities described in Exhibit A may be permitted only pursuant to a signed written Addendum to this Agreement.

3. **Duration of Consent to Access.** This Agreement shall terminate upon the completion of the Work on the System, unless the Parties mutually agree to extend the Agreement otherwise and memorialize such agreement in writing. In the event an extension of the Agreement is required, the City and the Port agree that such extension shall not be unreasonably withheld, conditioned or delayed.

4. **Damage/Restoration.** The Port (through Anchor and its subcontractors) shall take all reasonable precautions to avoid damage to the System. If any damage is caused to the System in the course of performance of the Work, including without limitation, damage to any utilities, pipelines, catch basins, equipment, or any other real property, improvements or structures, then the Port shall, at its sole cost and expense, immediately take all action reasonably necessary to repair the damage and restore the areas of the System damaged by the Work to the condition that existed immediately prior to commencement of the Work.

5. **Work Standards; Compliance with Laws.** The Work will be performed on the Port's behalf by Anchor. The Port shall direct Anchor: (a) to perform the Work in a manner and on a schedule that will minimize interference with the City's use of the System; (b) to obtain any and all permits and governmental approvals necessary for performance of the Work; and (c) to perform the Work in compliance with all applicable laws and regulations. The Port shall ensure that Anchor, and all contractors and subcontractors who will perform the Work, have all required licenses and certifications. The Port (through Anchor and its subcontractors) shall ensure that all Work is performed in a workmanlike manner. Anchor shall be solely responsible for the health and safety of its employees, agents, consultants, and contractors while on the System, except in the event of gross negligence or intentional acts by the City or the Port. The Parties, along with their consultants, will work cooperatively to develop and approve specific dates and times for the timely and safe performance of the Work.

6. **Notice of Intent to Perform; Information Sharing.** By executing this agreement, the City and the Port acknowledge their receipt, review and approval of the Scope of Work attached as Exhibit A. The Port (through its consultants) shall schedule the Work in cooperation with the City. Anchor shall have the ability to communicate and coordinate directly with the City and/or the City's agents, representatives and consultants regarding the scheduling and performance of the Work. The City may have its own agents, representatives and consultants present during the course of the Work, at its sole cost and expense.

The Port shall deliver to the City copies of all analytical results, quality assurance/quality control data, chain-of-custody records, and any other data or records relating to subsurface soil and groundwater samples from the Work (collectively "Work Data"), prepared by Anchor or by entities under the direction of Anchor. Attorney-client privileged documents and attorney work product documents shall not be subject to the information sharing provisions of this Paragraph.

7. **Indemnification.** The Port shall defend, indemnify, and hold harmless the City and the City's successors, and assigns (each a "City Indemnitee," and collectively, the "City Indemnitees"), from and against any liabilities, claims, damages, demands, losses, actions, judgments, causes of action, assessments, penalties, costs, and expenses, including but not limited to reasonable attorneys' fees and costs (collectively, "Losses"), arising out of or relating to personal injury, death, personal property damage, or real property damage caused by the performance of the Work; except to the extent the Losses arise out of or result from the gross negligence or willful misconduct

of the City, the City Indemnitees, or the City's respective agents, contractors, consultants, and/or representatives. To the extent any Losses arise out of or result from the concurrent negligence of the City and the Port, then the Port's duty to defend, indemnify and hold harmless is valid and enforceable only to the extent of the negligence of the Port and their employees, agents, consultants, and contractors.

8. **Insurance.** The Port shall ensure that Anchor and all other contractors and subcontractors that will perform the Work on the System procure and/or maintain commercial general liability and automobile liability, and shall ensure that Anchor and its specific contractors and subcontractors procure and/or maintain pollution liability policies. The Port shall ensure that Anchor carries at least the following coverages:

- a. Worker's Compensation Insurance to the minimum limits as required by law and Employer's Liability Insurance with limits of at least \$1,000,000 per occurrence;
- b. Commercial General Liability with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate combined single limits for bodily or property damage;
- c. Automobile Liability Insurance covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 combined single limit and annual aggregate;
- d. Contractor's Pollution Liability Insurance with limits of \$2,000,000 per claim and \$2,000,000 aggregate.

The Port shall ensure that the City is named as an additional insured on all insurance policies (except for the Worker's Compensation Insurance policy) listed in the above Paragraph. All insurance shall be placed with insurance companies licensed to do business in the state of Washington. Before commencing any of the Work on the System, the Port shall ensure that the City has received certificates of insurance evidencing the insurance coverage required by the preceding Paragraph.

9. **Liens.** The Port shall discharge at once or bond or otherwise secure against all liens that are filed against the System in connection with the Work. The Port shall defend, indemnify, and hold harmless the City Indemnitees from and against any and all Losses arising out of or relating to any liens filed against the System arising from the Work. The obligations of this Paragraph shall survive termination of this Agreement.

10. **Resolution of Disputes.** Any dispute that arises under this Agreement shall be resolved according to this Paragraph. Except as otherwise provided in this Agreement, any Party may initiate the dispute resolution process by providing a written notice of dispute to all other Parties. Within five (5) business days after delivery of such notice, the Parties' designated representatives shall schedule a meeting in person or by telephone to attempt to resolve the dispute through good faith negotiations. If the Parties to the dispute cannot resolve the dispute within fifteen (15) business days after the concluding date of such meeting, then the Parties to the dispute agree to submit the dispute to mediation. Any

Hazardous Substances present in or emanating from the System, or for any claims relating to the presence of Hazardous Substances in or beneath Budd Inlet, or for any structural damage or other alleged damage to the System. The Parties do not waive, and expressly reserve, all claims they may have against all third parties relating to Hazardous Substances present in or emanating from the System, or for any claims relating to the presence of Hazardous Substances in or beneath Budd Inlet, or for any structural damage or other alleged damage to the System, including without limitation, all claims for recovery of costs incurred by the Parties pursuant to this Agreement.

As used herein, the term "Hazardous Substances" means any waste, pollutant, contaminant, chemical, petroleum product, pesticide, fertilizer, substance, or material that: (a) after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities; or (b) is defined, classified, or designated as hazardous, toxic, radioactive, dangerous, or other comparable term or category under any Environmental Laws. As used herein, the term "Environmental Laws" means all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes, and any judicial or administrative interpretation thereof or requirement thereunder, relating to the regulation or protection of human health, safety, the environment and natural resources, including, without limitation, the Washington State Model Toxics Control Act, Chapter 70.105D RCW. This Agreement is not, and shall not be construed as, a settlement, waiver, release, compromise, or satisfaction of any claim, demand, or action relating to Hazardous Substances present in or emanating from the System, and does not waive any legal rights of the Parties.

5. **Entire Agreement.** This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and understandings among the Parties relating to the subject matter of this Agreement. This Agreement shall be modified or amended only by written agreement of all Parties hereto.

6. **Successors; Assignment.** The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns. No Party may assign its rights or obligations under this Agreement without the written consent of the other Parties, which consent will not be unreasonably withheld.

7. **Severability.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted, rather than voided, if possible, to achieve the intent of the Parties, and the balance of the Agreement shall remain in full force and effect.

8. **Authority.** Each person executing this Agreement represents and warrants that they have the authority and power enter to into this Agreement, and the Parties may rely upon such representation and warranty.

9. **Counterparts.** This Agreement may be executed in counterparts, and all such counterparts once so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the parties. A

faxed or email copy of an original signature shall be deemed to have the same force and effect as the original signature.

10. **Admissibility.** Pursuant to federal and state rules of evidence, this Agreement shall not be admissible in any court or administrative proceeding as evidence of responsibility or liability of either Party with regard to any Hazardous Substances present in or emanating from the System. This Agreement is admissible, however, in any action to enforce the terms and conditions of this Agreement.

11. **Amendments.** Amendments to this Agreement shall become effective upon execution of a written amendment.

12. **Captions.** The headings used in this Agreement have been inserted for convenience only and shall not affect the construction of this Agreement.

13. **Governing Law and Venue.** This Agreement shall be interpreted and enforced pursuant to the laws of the state of Washington. Venue for any lawsuit arising out of this Agreement shall be in Thurston County, Washington.

14. **Voluntary Execution.** In executing this Agreement, the Parties acknowledge that they have consulted with their respective attorneys and that they have voluntarily executed this Agreement after independent investigation, without fraud, duress, or undue influence.

15. **Effective Date.** This Agreement shall become effective as of the latest date of execution below.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth below.

PORT OF OLYMPIA
A Washington municipal corporation

E.B. Galligan

Its: Executive Director

(Date)

CITY OF OLYMPIA
A Washington municipal corporation

(Signature)

Its: _____

(Date)

APPROVED AS TO FORM:


Deputy City Attorney

Exhibit A Scope of Work

The following Scope of Work describes the tasks the Port of Olympia (Port) proposes to conduct in the City of Olympia (City) stormwater system to investigate potential ongoing releases of contaminated sediment to Budd Inlet. These tasks would be conducted by Anchor QEA and a subconsultant with expertise in sediment trap design and installation.

TASK 1: SITE RECONNAISSANCE

Site reconnaissance will include investigations of manholes/catch basins in three areas: Moxlie Creek Outfall #22771, Fiddlehead Marina Outfall #2399, and East Bay Outfall #130. The anticipated work to be performed for this task includes:

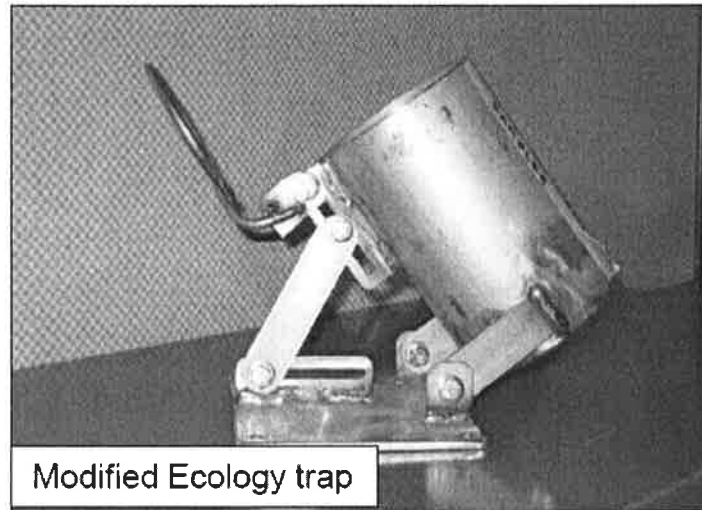
- Obtain street/rim elevations from the City; specifically, to identify the manholes and catch basins in Task 2. If the City doesn't provide street elevations, Anchor QEA will use publically available light detection and ranging (LiDAR) data from The Puget Sound LiDAR Consortium to determine the street elevations at proposed locations.
- Hire a subcontractor with expertise in trap design and installation.
- Measure the invert elevations along the main pipe (downstream to upstream) to find locations that are not tidally influenced.
- Determine if the manhole/catch basin configuration(s) are suitable for sediment trap installation.

TASK 2: SEDIMENT TRAP INSTALLATION

The Port will install up to five sediment traps in manholes or catch basins that are not tidally influenced. The City has indicated that the Fiddlehead outfall has tide gates and is therefore not affected by tides. In the other two outfalls (Moxlie and East Bay), the tides can come up to 9.58 feet National Geodetic Vertical Datum of 1929 (NGVD29) so catch basins/manholes with invert elevations ≥ 9.58 feet NGVD29 will be selected. The anticipated work to be performed for this task includes:

- Attach custom fabricated sediment traps to pipe or catch basin. Exact details of the sediment trap model and installation procedures cannot be provided until the site reconnaissance is performed. In general, a sediment trap is attached to the pipe or catch basin edge (near outlet) with screws. Figure 1 shows a commonly used Modified Ecology trap.

Figure 1



- Installation will likely require confined space entry depending on the elevation of the sump. The subcontractor selected will be adequately trained in confined space entry protocols.
- Figures 2 through 4 provide potential locations for each of the three drainage areas.
 - Figure 2 shows Moxlie Creek Outfall #22771. The main storm pipe is 72" corrugated metal at the outfall with a 42" connecting reinforced concrete pipe.
 - Figure 3 shows Fiddlehead Outfall # 2399. The main storm pipe is 48" reinforced concrete.
 - Figure 4 shows East Bay Outfall #130. The main storm pipe is 24" corrugated metal.

TASK 3: SEDIMENT TRAP MONITORING

Sediment traps will be periodically checked for sediment accumulation. The anticipated work to be performed for this task includes:

- Check traps one to three months after installation (time frame will be based on selected locations and subcontractor recommendations).
- Leave trap in place if minimal sediment accumulation is present. The trap will be checked again after an agreed upon time frame.
- If sufficient volume of sediment is present, sediment will be removed from the trap and analyzed per Task 4.
- The traps will be left in place until all parties have reviewed the analytical data, at which time the traps will either be removed or additional sample collection will occur.

TASK 4: CHEMICAL ANALYSIS

Chemical analysis will be conducted on the sediment obtained from the sediment traps. The anticipated work to be performed for this task includes:

- Analysis of dioxin and furans (1-10 grams).
- Analysis of semi-volatile organic compounds including polycyclic aromatic hydrocarbons (5-30 grams).
- Analysis of total organic carbon (5 grams).
- Archive remaining volume in frozen storage for potential future analysis.

TASK 5: DOCUMENTATION

The following deliverables will be prepared for the chemical analysis work:

- A sampling and Analysis Plan (SAP) that describes the sampling and data quality procedures. The SAP will include maps of the sampling locations, manhole and/or catch basin configurations, selected trap configurations, and sampling protocols and frequency.
- A summary of information collected as part of this investigation (i.e., field notes, pictures, and analytical data).

SCHEDULE

The specific project schedule can be refined once the City finalizes the access agreement. In general, it is anticipated that the site reconnaissance will begin in May. A draft of the SAP should be completed by June followed by trap installation in late June. If an adequate volume of sediment accumulates in three months or less, field and analytical data would be delivered to the City as early as December.

Budd Inlet Dioxin

3/10/15 SB

Dioxin

- Combustion of wood, gasoline and other materials containing chlorine is the most common source of dioxins. They are transported by air, erosion, and storm runoff and therefore, they are ubiquitous in the environment.
- Dioxins slowly breakdown and strongly adhere to soils and sediments.
- 90 to 95% of dioxin exposure comes from food through the food chain.
- Dioxins and furans are carcinogenic, may cause cancer, disrupt the endocrine system, and cause reproductive and developmental effects.

Regulatory Soil Thresholds and Budd Inlet

- Federal regulatory dioxin limit is 50 parts per trillion (ppt). The State limit is 11 ppt.
- Dioxin levels in Budd Inlet are as high as 4212.5 and 230.6 ppt at the port's shipping berths.
- The highest levels of dioxins were found in sediments near stormwater discharge pipes and the Port's shipping berths.
- The specific source of dioxins in Budd Inlet is unknown but they most likely came from the historical industrial use of shore areas or runoff.
 - Shoreline industries included lumber mills, sawmills, a veneer plant, wood treatment, boatyards, steel fabrication, and petroleum storage.

Port, Ecology, and Olympia

- In April 2007, the Department of Ecology launched a sediment investigation of Budd Inlet after the Port of Olympia found elevated levels of dioxins in an area scheduled for maintenance dredging.
- Follow-up work mandated by Ecology requires the Port to investigate dioxin levels in Olympia stormwater pipes.

Current Status

- Sampling of City catch basins in the spring of 2014 found dioxin in each sample at levels ranging between 12.5 TEQ (toxic equivalency) and 885 TEQ. TEQ is a composite measure. In this case the TEQ number is the same in ppt.
- The City has retained technical and legal services to assist in the investigations.
- Our technical consultants are reviewing all documents provided by the Port pertaining to dioxin sampling in Budd Inlet.

Next Steps

- Sign a new Access Agreement with the Port allowing Port consultants to investigate potential ongoing releases of contaminated sediment to Budd Inlet.
- The City's technical consultants and the Port's technical consultants will determine the best locations for sediment traps.
- The consultants will be available to help address emerging issues.